(3)

IN THE HIGH COURT OF JUDICATURE:CHHATTISGARH: BILASPUR

WRIT PETITION NO. 256 OF 2006 **SINGLE BENCH**

PETITIONER : Ishwari Prasad Kashyap
aged 39 yrs.
s/o Shri Chhabi Ram Kashyap
r/o Gram : Masani
Tah : Lormi
Distt: Bilaspur CG

P.R. No. 2513/06
Presented by Shri Anurag Shrivastava
dated 31/5/06

- VERSUS -

RESPONDENTS :

1. STATE OF CHHATTISGARH
Through : The secretary to
the Govt. of CG
Department of Panchayat
D.K.S. Bhavan : Mantralaya
Raipur CG

2. The Chief Executive Officer
Tah - Lormi
Distt- Bilaspur CG

3. Gram Panchayat : Masana
Through : The Sarpanch
Gram Panchayat- Masana
Tah-Lormi
Distt - Bilaspur CG

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WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA

(45)

(43)

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..W.P(S).2567/06 **सन्** **200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

12-5-2006

Shri Anurag Shrivastava, counsel for the petitioner.

Shri Satish Gupta, Deputy Govt. Advocate for the State/ respondents No.1 and 2.

Heard on admission.

Facts of the case are admitted.

A short point involved in this case is that as to whether respondent No.3, Gram Panchayat, was entitled to remove the petitioner from the post of Panchayat Karmi without holding enquiry as envisaged in Rule 7 of the Chhattisgarh Panchayat Service (Discipline and Appeal) Rules, 1999 (hereinafter referred to as 'the Rules, 1999), thus only legal point is involved, therefore, it is decided to decide the writ petition at the admission stage itself.

Notice is not being issued to respondent No.3 because the impugned order is wholly perverse and contrary to the Rules, 1999. However, if respondent No.3 still feels aggrieved by this order, respondent No.3 will be at liberty to move I.A. for recalling of this order.

The case of the petitioner is that he was appointed on the post of Panchayat Karmi in the Gram Panchayat Masana, Tehsil Lormi, District Bilaspur vide order dated 2.5.2005, Annexure-P/6. Some villagers made a complaint against the petitioner stating that the petitioner has taken an amount of Rs.15-20 and Rs.300 from the villagers for issuance of Ration Card. Based on the complaint, Executive Officer asked L.N. Anant, Panchayat and Samaj Shiksha Sangathak, Janpad Panchayat, Lormi to conduct enquiry and he submitted report Annexure-P/7 to the Executive Officer, same was forwarded to the respondent No.3, Sarpanch, who after issuance of the notices passed resolution in the Gram Sabha on

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —2—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

13.3.2006 vide Annexure-P/5 removing the petitioner from the post of Panchayat Karmi and same was confirmed vide resolution dated 18.3.2006, Annexure-P/6.

Further case of the petitioner is that the petitioner's services were terminated without observing principles of law, ignoring and following proper procedure as envisaged in the Rules, 1999.

It is admitted position that before removing the petitioner from the post of Panchayat Karmi, no enquiry was conducted against the petitioner as per the provisions of Rule 7 of the Rules, 1999. Rule 5 prescribes Penalties i.e. Minor Penalties and Major Penalties and removal comes under the category of Major Penalties. Rule-7 prescribes procedure for imposing major penalties. Sub-rule (1) lays down that 'no order, imposing on a member of the Panchayat Service, any of the penalties specified in clause (iv) to (via) of Rule 5 shall be passed except after a formal inquiry is held as far as may be, in the manner hereinafter provided. Sub-rule (2) lays down that the disciplinary authority shall frame Definite charges on the basis of allegations and shall communicate such charges, along with the statement of allegations, to the member of the Panchayat Service and also require him to submit, within such time as may be specified a written statement of defence and also to state whether he desires to be heard in person. Sub-rule (3) envisages that the person against whom inquiry is to be held shall, for the purpose of preparing the defence, be permitted to inspect and take extracts from such records as he may specify. Sub-rule (4) prescribes that on receipt of the written statement of defence or if any such statement is not received within the time specified, the disciplinary authority may himself enquire into such of the charges as are not admitted or appoint any Enquiry Officer to hold the inquiry and forward to him his

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

report and, if advised, his recommendation along with all the inquiry papers. Sub-rule (5) envisages that the disciplinary authority may nominate any person to present the case in support of the charges before the Enquiry Officer. Sub-rule (6) further says that if the servant of the Panchayat Service desires to be heard in person, he shall be so heard. If he so desires or if the disciplinary authority so directs, an oral enquiry shall be held by the Enquiry Officer. At such inquiry evidence shall be heard as to such of the allegations as are not admitted and the person charged shall be entitled to cross-examine the witness, to give evidence in person, to produce documentary evidence, if any, and to have such witness called as he may wish. Sub-rule (7) envisages that at the conclusion of the inquiry, the Enquiry Officer shall prepare a report of the inquiry, recording his findings on each of the charges together with reasons therefor. Sub-rule (8) envisages that the proceedings conducted against the persons charged shall contain a sufficient record of

(i) the charges framed against such person and the statement of allegations;

(ii) the written statement of defence if any;

(iii) the oral evidence taken in the course of the inquiry,

(iv) the documentary evidence considered in the course of the inquiry;

(v) the orders, if any, made by the Enquiry Officer or the disciplinary authority as the case may be with regard to the inquiry;

(vi) a report setting out the findings on each charge and the reasons therefor.

The Enquiry Officer shall submit the records of the proceedings mentioned in clause (8) to the disciplinary authority and the disciplinary

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -4-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
Barve	authority shall furnish copy of the report of Enquiry Officer to the person charged and thereafter the disciplinary authority shall consider the representation, if any made by the person charged in response to the notice and determine the penalty. None of the above provisions has been complied with in this case. The impugned order is *ex facie* illegal and contrary to the Rules, 1999, therefore, same deserves to be quashed. In the result, the writ petition is allowed and impugned order is quashed. However, respondent No.3 shall not be prevented from conducting the inquiry afresh and passing appropriate orders in consonance with the Rules, 1999. No order as to costs. In view of this order, M.(W.)P. No.1925/2006 stands disposed of. Parties are entitled for certified copy of this order. **Sd/-** **L.C.Bhadoo** **Judge**	